

IN THE HIGH COURT OF TANZANIA

AT TABORA

APPELLATE JURISDICTION

(Tabora Registry)

(HC) CRIMINAL APPEAL NO. 91 OF 1985

(ORIGINAL CRIMINAL CASE NO. 35 OF 1985

OF THE DISTRICT COURT OF KASULU DISTRICT AT KASULU

Before: T. A. Mchujuko Esq., Senior District Magistrate)

LUNANDA MAHURUTI.....APPELLANT

versus

THE REPUBLIC.....RESPONDENT

JUDGEMENT

MAINA, J.

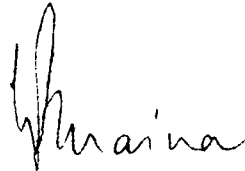
The appellant, Lunanda Mahuruti, was convicted by the district court at Kasulu of burglary and stealing. He was sentenced to five years imprisonment in the first count and twelve months imprisonment in the second count, to be served concurrently. He is appealing to this Court.

There was evidence by PW.1 Benjamin Tosiri that after a quarrel with the appellant in a bar, they separated and Benjamin went to report the matter. Later, when he went to his house he found the house had been broken into and a mattress, a blanket, a bedsheet, pillows and cash Shs.3,000/= had been stolen. He suspected the appellant and reported accordingly to Police. When the appellant's house was searched the complainant was not present. Police seized a mattress which they found in the house. They sent it to the Police Station and the complainant was called and he identified it saying that "it was also eaten by cockroaches". The appellant's evidence was that the mattress belonged to him. He called two witnesses, Kasa and Mwano, who were familiar with the mattress and they supported the appellant's evidence.

The crucial point in this appeal is on the identification of the mattress. This Court has said on several occasions that a complainant must give description of his stolen property and point out marks of identification when he reports the theft. In this case, the complainant simply reported the theft of his mattress and when Police went to the appellant's house, they seized a mattress they found in the appellant's house, sent it to Police Station and showed it to the complainant who said it was his property. PW.4 Musa said that he was present when Police searched the appellant's house and one Police Officer said that the mattress was not the one which they were looking for. That

indicates that they simply took the ~~matress~~ because they found it in the appellant's house. They were not sure whether it was the stolen one because the complainant had not given a description or marks of identification before the search was conducted. A ~~matress~~ is an article of common use and so evidence of identification is crucial to sustain a conviction. That evidence must establish beyond reasonable doubt that the property belongs to the complainant. The fact that the matress was torn on its sides and that it was eaten by cockroaches was not sufficient identification evidence. The complainant mentioned these marks after he was shown the matress by the Police. In view of this, it cannot be said that the prosecution proved its case beyond reasonable doubt. The appellant did not have the burden to prove his innocence. The prosecution failed to prove the appellant's guilt beyond reasonable doubt.

This appeal is allowed. The conviction is quashed and the sentence is set aside. The appellant must be discharged from custody forthwith unless he is otherwise lawfully held.



W. J. MAINA, J.
JUDGE.

At TABORA

22 April, 1986

Mussa, State Attorney, for the Republic
Appellant absent.